

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Ogletree, #208-409,)	
)	C/A No.: 8:05-0668-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
David Cooper, co-owner of Columbia Care)	
Center; and Mr. NFN Wyatt, co-owner of)	
Columbia Care Center,)	
)	
Defendants.)	
)	

Plaintiff Robert Ogletree is an inmate in custody of the Federal Bureau of Prisons. He brings this action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1999) and the Federal Tort Claims Act, asserting that he was injured and denied proper medical care in violation of his rights under the Eighth Amendment.

This matter is before the court on Defendants' motion for summary judgment filed July 25, 2005. By order filed July 26, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response to Defendants' motion on October 31, 2005.

In accordance with 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. On February 13, 2006, the Magistrate Judge issued a Report of Magistrate Judge in which she recommended that Plaintiff's claims be dismissed without prejudice to allow him to exhaust his administrative remedies. The Clerk of Court mailed a copy of the order to Plaintiff at his last known address at Room 409, Columbia Care Center, 7901 Farrow Road, Columbia, South Carolina 29203. The envelope containing the order was returned to the Clerk of Court on February 21, 2006, marked "NO LONGER AT THIS ADDRESS - RTS."

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Plaintiff was advised by order filed April 14, 2005 of his responsibility to notify the court *in writing* if his address changed. Plaintiff was informed that his case could be dismissed for failing to comply with the court's order. It appears that Plaintiff no longer wishes to pursue this action. Under these circumstances, the court declines to adopt the Report of Magistrate Judge that the case be dismissed without prejudice. The court concludes that the within action should be dismissed pursuant to Rule 41(b) *with prejudice* for failure to prosecute.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

February 28, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.